



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

January 4, 2022

Beverly L. O'Toole
The Goldman Sachs Group, Inc.

Re: The Goldman Sachs Group, Inc. (the "Company")
Incoming letter dated January 3, 2022

Dear Ms. O'Toole:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by The Nathan Cummings Foundation (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its December 23, 2021 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter will be made available on our website at <https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Laura Campos
The Nathan Cummings Foundation

Beverly L. O'Toole
Managing Director
Associate General Counsel

Goldman
Sachs

December 23, 2021

VIA E-MAIL

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *The Goldman Sachs Group, Inc.*
Shareholder Proposal of The Nathan Cummings Foundation
Securities Exchange Act of 1934 ("Exchange Act")—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that The Goldman Sachs Group, Inc. (the "Company") intends to omit from its proxy statement and form of proxy for its 2022 Annual Meeting of Shareholders (collectively, the "2022 Proxy Materials") a shareholder proposal (the "Proposal") and statements in support thereof (the "Supporting Statement") received from The Nathan Cummings Foundation (the "Proponent").

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2022 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be furnished

concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal states:

RESOLVED: Shareholders of Goldman Sachs Group, Inc. (“Goldman Sachs”) ask the Board of Directors to oversee the preparation of a public report on the impact of the use of mandatory arbitration on Goldman Sachs’s employees and workplace culture. The report should evaluate the impact of Goldman Sachs’s current use of arbitration on the prevalence of harassment and discrimination in its workplace and on employees’ ability to seek redress. The report should be published by the end of the third quarter of 2022, be prepared at reasonable cost and omit proprietary and personal information.

A copy of the Proposal, the Supporting Statement, as well as relevant correspondence with the Proponent, is attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal. Specifically, on December 21, 2021, the Company published a report entitled “Goldman Sachs’ Report on Review of Arbitration Program,” discussing the review undertaken by the Company’s Board of Directors (the “Board”) to assess the Company’s arbitration program and reporting on the impact of the use of mandatory arbitration on Company employees and workplace culture (the “Board Report”), which is directly responsive to the Proposal. *See* Exhibit B.¹

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(10) Because It Has Been Substantially Implemented.

A. Background

¹ The Board Report is also publicly available on the Company’s website at <https://www.goldmansachs.com/investor-relations/corporate-governance/corporate-governance-documents/report-on-review-of-arbitration-program.pdf>.

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials “[i]f the company has already substantially implemented the proposal.” The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) was “designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management.” Exchange Act Release No. 12598 (July 7, 1976). Under this standard, when a company can demonstrate that it has already taken actions to address the essential objective of a shareholder proposal, the Staff has concurred that the proposal has been “substantially implemented” and may be excluded as moot. The Staff has noted that “a determination that the [c]ompany has substantially implemented the proposal depends upon whether [the company’s] particular policies, practices and procedures compare favorably with the guidelines of the proposal.” *Texaco, Inc. (Recon.)* (avail. Mar. 28, 1991).

At the same time, a company need not implement a proposal in exactly the same manner set forth by the proponent. *See General Motors Corp.* (avail. Mar. 4, 1996). For example, the Staff has concurred that companies, when substantially implementing a shareholder proposal, can address aspects of implementation on which a proposal is silent or which may differ from the manner in which the shareholder proponent would implement the proposal. *See* 1998 Release at n.30 and accompanying text. *See also Devon Energy Corp.* (avail. Apr. 1, 2020) (concurring with the exclusion of a proposal requesting a report describing if, and how, the company planned to reduce its total contribution to climate change and align its operations and investments with the Paris Agreement’s goals as substantially implemented by the company’s public disclosures).

Further, differences between a company’s actions and a shareholder proposal are permitted as long as the company’s actions satisfactorily address the proposal’s essential objectives. For example, in *The Boeing Co.* (avail. Feb. 17, 2011), the Staff concurred with exclusion of a proposal under Rule 14a-8(i)(10) requesting that the company “review [its] policies related to human rights” and report its findings, where the company had already adopted human rights policies and provided an annual report on corporate citizenship. *See also Hess Corp.* (avail. Apr. 11, 2019) (concurring with the exclusion of a proposal requesting a report on how the company can reduce its carbon footprint in alignment with greenhouse gas reductions necessary to achieve the Paris Agreement’s goal as substantially implemented by the company’s recent disclosures); *The Dow Chemical Co.* (avail. Mar. 18, 2014, *recon. denied* Mar. 25, 2014) (“*Dow Chemical 2014*”) (concurring with the exclusion of a proposal requesting that the company prepare a report “assessing the short and long term financial, reputational and operational impacts that the legacy of the Bhopal disaster may . . . reasonably have on [the company’s] Indian and global business opportunities, and reporting on any actions [the company] intends to take to reduce such impacts,” where the company had published a “Q and A” regarding Bhopal and disclosed other actions it had taken and would continue to take); *Johnson & Johnson* (avail. Feb. 17, 2006) (concurring with the

exclusion of a proposal requesting that the company confirm the legitimacy of all current and future U.S. employees as substantially implemented by the company's verification of the legitimacy of over 91% of its domestic workforce). Therefore, if a company has satisfactorily addressed the proposal's "essential objective," the proposal will be deemed "substantially implemented" and, therefore, may be excluded as moot. *See, e.g., Quest Diagnostics, Inc.* (avail. Mar. 17, 2016); *Exelon Corp.* (avail. Feb. 26, 2010); *Anheuser-Busch Companies, Inc.* (avail. Jan. 17, 2007); *ConAgra Foods, Inc.* (avail. July 3, 2006); *Talbots* (avail. Apr. 5, 2002); *Masco Corp.* (avail. Mar. 29, 1999); *The Gap, Inc.* (avail. Mar. 8, 1996).

B. Overview Of The Published Board Report

As explained below, Company shareholders were asked to vote on a virtually identical proposal (the "Prior Proposal") submitted by the same Proponent at the Company's 2021 Annual Meeting of Shareholders (the "2021 Annual Meeting"). The Prior Proposal is also referenced in the Supporting Statement. The elements of the Proposal can be distilled as follows:

- 1) a public report, overseen by the Board;
- 2) "on the impact of the use of mandatory arbitration on [Company] employees and workplace culture;" and
- 3) evaluating the impact "on the prevalence of harassment and discrimination in [the Company's] workplace and on employees' ability to seek redress."

The Board Report is directly responsive to each element of the Proposal. Indeed, the Board Report specifically noted that it was prepared in response to concerns raised by certain shareholders in connection with the 2021 Annual Meeting, reflective of the concerns raised in the Prior Proposal, which is virtually identical to the Proposal and is referenced therein. As discussed below, the published Board Report unambiguously addresses both the explicit and implicit requests in the Proposal.

1. Background On The Board Report

Following the 2021 Annual Meeting, and taking into account the shareholder vote on the Prior Proposal, in June 2021, the Company announced it would "undertake a comprehensive

review to assess the [Company’s arbitration program,]”² which review took into account the specific concerns raised by shareholders in connection with the Prior Proposal, including whether the “use of binding, pre-dispute arbitration agreements may potentially limit employees’ remedies for wrongdoing, allow harassment and discrimination to go unseen and unaddressed, and prevent employees from learning about repeat offenders or other shared concerns.”³

As described in the Board Report, “[i]n order to assess the impact of the use of mandatory arbitration on [Company] employees and workplace culture... the [Company] retained [a third party law firm] to undertake a comprehensive assessment of the [Company’s] arbitration program.”⁴ Specifically, the third party law firm “was asked to advise [the General Counsel] on whether [the Company’s] arbitration program negatively impacts employees’ ability to seek redress of discrimination or harassment and whether the confidential nature of arbitration proceedings increases the prevalence of workplace misconduct.”⁵ Additionally, the third party law firm retained a law professor who serves as the Director of the Center for Labor and Employment Law and Co-Director of the Institute of Judicial Administration at New York University School of Law, as an additional advisor, and together the professor and the law firm undertook a comprehensive review of the Company’s mandatory arbitration program covering a period of approximately six years (the “Privileged Law Firm Assessment”). Upon completion, the Privileged Law Firm Assessment was provided to the Company’s General Counsel who then advised the Board on its findings.

As reflected in the Board Report, the Board considered the findings of the Privileged Law Firm Assessment, including “the history and experience of arbitration at the [Company] in the context of the [Company’s] policies, processes and protocols,” as well as the advice of the General Counsel. The Board Report details the scope of the review undertaken, detailing the type of information the Board evaluated, including the Privileged Law Firm Assessment, as well as the Board’s determinations and conclusions as to the Company’s use of mandatory arbitration as well as any impact of arbitration on the Company’s employees.⁶ The Board

² See <https://www.goldmansachs.com/media-relations/press-releases/2021/gs-statement-on-arbitration-policy-review.html>.

³ Board Report at 1.

⁴ *Id.*

⁵ *Id.* at 2.

⁶ The Privileged Law Firm Assessment was supported by comprehensive data, including confidential employee information, that supports the assessment and evaluation reported on as requested by the Proposal.

reviewed and approved publication of the Board Report, which was published on December 21, 2021.

2. *The Published Board Report Addresses The Impact Of The Use Of Mandatory Arbitration On Company Employees And Workplace Culture, Including On The Prevalence Of Harassment And Discrimination In The Workplace And On Employees' Ability To Seek Redress*

The Board Report describes (i) the comprehensive review undertaken under the Board's oversight regarding the impact of the use of mandatory arbitration on Company employees and workplace culture, (ii) the assessment of how the use of mandatory arbitration impacts the prevalence of harassment and discrimination in the workplace and on employees' ability to seek redress, and (iii) the Board's determination and conclusions regarding whether and how to continue use of its arbitration program in consideration of the Privileged Law Firm Assessment and the Company's existing programs and policies related to arbitration and the handling of employee complaints. In this regard, for the reasons detailed in the Board Report, the Board determined to continue use of its arbitration program, but directed Company management to make certain enhancements and programmatic changes to the Company's arbitration program and reporting processes in recognition of the shareholder concerns raised in connection with the Prior Proposal.

In direct response to the Proposal and the Prior Proposal, the Board Report specifically addresses "the impact of the use of mandatory arbitration on [Company] employees and workplace culture." The Board Report states that:

- The "review established that the general concerns raised about the use of arbitration agreements are not applicable to [the Company's] arbitration program or experience."⁷
- There is "no sign [the Company's] arbitration program is in any way being used to cover up incidents of discrimination or harassment, protect perpetrators or encourage recidivism."⁸

⁷ *Id.* at 1.

⁸ *Id.*

- The Company’s “robust policies and procedures for ferreting out, investigating, addressing and reporting misconduct are strong preventative measures for curtailing recidivism.”⁹
- Based on its review, the Board determined that “arbitration remains the better way to resolve disputes.”¹⁰
- There are certain benefits of arbitration, including “certainty, consistency, access, and efficiency” and that “confidentiality allows complainants to feel safe coming forward.”¹¹

Each of these aspects of the Board Report are directly responsive to the Proposal (and the Prior Proposal) and discuss the impact that the Company’s arbitration program has on employees and workplace culture with respect to the handling of employee-related complaints.

Further, in direct response to the Proposal (and the Prior Proposal), the Board Report also addresses the Company’s assessment of how the use of mandatory arbitration impacts the prevalence of harassment and discrimination in the workplace and on employees’ ability to seek redress. In pertinent part, the Board Report states that there is “no indication the current program is ... increasing the prevalence of discrimination or harassment in the workplace”¹² and “no indication that the [Company’s] arbitration program shields employees who engaged in misconduct.”¹³ In addition, as described above, the Company’s General Counsel specifically requested that the Privileged Law Firm Assessment advise on whether the Company’s arbitration program negatively impacts employees’ ability to seek redress of discrimination or harassment and whether the confidential nature of arbitration proceedings increases the prevalence of workplace misconduct. Assisted by the Privileged Law Firm Assessment, the Board came to the conclusion and states in the Board Report there is “no indication the current program is negatively impacting employees’ ability to seek redress of alleged discrimination or harassment” and “no sign [the Company’s] arbitration program is in any way being used to cover up incidents of discrimination or harassment, protect

⁹ *Id.* at 4.

¹⁰ *Id.*

¹¹ *Id.* at 4.

¹² *Id.* at 2.

¹³ *Id.* at 4.

perpetrators or encourage recidivism.”¹⁴ In consideration of the Company’s existing framework for addressing sexual harassment claims, the Board Report states that “there is no indication that arbitration limited employees’ access to legal representation or inhibited employees’ ability to receive a fair and unbiased proceeding and outcome.”¹⁵

The Board Report further describes the Company’s employment policies, practices and protocols in place for addressing complaints of discrimination and harassment, which the Board considered as part of its evaluation of the impact of the Company’s arbitration program. For example, and as described in the Board Report, the Company’s Code of Business Conduct and Ethics¹⁶ details a “zero tolerance policy for discrimination and harassment” and the Company’s robust framework for addressing incidents of misconduct and establishing means by which such incidents are escalated through the appropriate channels so that misconduct can be properly addressed. This framework also includes employee training on the multiple channels, internal and external, for reporting, recording, escalating and investigating complaints, each as described in the Board Report.

Finally, as discussed in the Board Report, the Board determined that various changes were advisable in light of concerns raised and with a view towards “increasing transparency and accountability.”¹⁷ Specifically, as disclosed in the Board Report, the Board has directed Company management to waive confidentiality of arbitration decisions on sexual harassment claims at the option of the employee, provide regular reporting to the Board on sexual harassment matters and perform regular periodic assessments of the Company’s arbitration program.

Coupled with the Board’s finding as to the dearth of negative impacts stemming from the Company’s arbitration program, including evaluation of each of the elements described in the Proposal, the Board’s decision to make these enhancements also signals responsiveness to concerns surrounding mandatory arbitration raised in the Supporting Statement, including that the practice may “prevent employees from learning about shared concerns.”

In sum, the Board Report is directly responsive to each element of the Proposal’s request, thereby achieving the essential objective and substantially implementing the Proposal.

¹⁴ *Id.* at 2.

¹⁵ *Id.* at 4.

¹⁶ The Code of Business Conduct and Ethics is *available at* <https://www.goldmansachs.com/investor-relations/corporate-governance/corporate-governance-documents/revise-code-of-conduct.pdf>.

¹⁷ *Id.* at 1.

C. The Company Has Substantially Implemented The Proposal Through Publication Of The Board Report

As demonstrated above, the Board Report directly and unambiguously addresses the essential objective of the Proposal. In the Board Report, the preparation of which was overseen by the Board, the Company provides public, Board-level reporting on the impact of mandatory arbitration on Company employees and workplace culture, in particular evaluating the impact on the prevalence of workplace harassment and discrimination and on employees' ability to seek redress. Indeed, as discussed above, the Board Report was prepared following the 2021 Annual Meeting, and in taking into account the shareholder vote on the Prior Proposal, as well as the specific concerns raised by shareholders in connection with the Prior Proposal, which is virtually identical to the Proposal and is referenced therein. Thus, the Board Report substantially implements the Proposal for purposes of Rule 14a-8(i)(10). Moreover, the publication of the Board Report presents precisely the scenario contemplated by the Commission when it adopted the predecessor to Rule 14a-8(i)(10) "to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." 1976 Release.

When a company has already acted favorably on an issue addressed in a shareholder proposal, Rule 14a-8(i)(10) does not require the company and its shareholders to reconsider the issue. In this regard, the Staff has on numerous occasions concurred with the exclusion of shareholder proposals under Rule 14a-8(i)(10) that requested reports where the company already made public disclosures that compared favorably to the report requested by the proposal or addressed the same subject matter. *See, e.g., Mondelēz International, Inc.* (avail. Mar. 7, 2014) (concurring with the exclusion of a proposal requesting a report on the human rights risks of the company's operations and supply chain where the company had achieved the essential objective of the shareholder proposal by publicly disclosing its risk-management processes); *The Boeing Co.* (avail. Feb. 17, 2011) (concurring with the exclusion of a proposal requesting the company assess and report on human rights standards where the company's publicly available reports, risk management processes, and code of basic working conditions and human rights "compare[d] favorably with the guidelines of the proposal"); *Exelon Corp.* (avail. Feb. 26, 2010) (concurring with the exclusion of a proposal that requested a report on different aspects of the company's political contributions when the company had already adopted its own set of corporate political contribution guidelines and issued a political contributions report that, together, provided "an up-to-date view of the [c]ompany's policies and procedures with regard to political contributions"); *Caterpillar, Inc.* (avail. Mar. 11, 2008) (concurring with the exclusion of a proposal requesting that the company prepare a global warming report where the company had already published a report that contained information relating to its environmental initiatives); *The Dow Chemical Co.* (avail. Mar. 5, 2008) (concurring with the exclusion of a proposal requesting a global

warming report discussing how the company's efforts to ameliorate climate change may have affected the global climate when the company had already made statements about its efforts related to climate change in various corporate documents and disclosures). Even more so than the above-cited precedent, the Board Report compares favorably with the disclosure requested by the Proposal because it directly addresses each of the elements requested by the Proposal and was prepared in response to the Prior Proposal (also submitted by the Proponent, referenced in the Supporting Statement, and that requested a report virtually identical to the report requested by the instant Proposal).

Moreover, the Staff has consistently concurred with the exclusion of shareholder proposals requesting reports even when the company's existing public disclosures or responsive reports did not provide all of the information requested or give the answer that the proponent expected. For example, in *Amazon.com, Inc. (Sisters of the Order of St. Dominic of Grand Rapids et al.)* (avail. Mar. 27, 2020) ("*Amazon 2020*"), the Staff concurred with the exclusion of a proposal asking that the board's compensation committee "prepare a report assessing the feasibility of integrating sustainability metrics . . . into performance measures or vesting conditions that may apply to senior executives under the [c]ompany's compensation plans or arrangements." The company pointed to disclosure that had been provided in its proxy statement the prior year, explaining why the company's compensation committee was of the view that performance conditions on the company's stock awards were neither necessary nor, given the nature of the company's business, appropriate. The report satisfied the essential objective of the proposal by reporting on the committee's assessment of specified topic, and the Staff concurred that the proposal had been substantially implemented.

Similarly, in *Dow Chemical 2014*, the Staff concurred with the exclusion of a proposal requesting that the company prepare a report "assessing the short and long term financial, reputational and operational impacts" of an environmental incident in Bhopal, India. The company argued that brief statements in a document included on its website providing "Q and A" with respect to the Bhopal incident substantially implemented the proposal. In making its determination, the Staff noted that "it appears that [the company's] public disclosures compare favorably with the guidelines of the proposal and that [the company] has, therefore, substantially implemented the proposal." See also *Amazon.com, Inc. (The Nathan Cummings Foundation)* (avail. Apr. 7, 2021) (concurring with the exclusion of a proposal requesting a report on the company's "efforts to address hate speech and the sale or promotion of offensive products throughout its businesses" where the company had published a blog post discussing the company's policies on the same topic); *Wells Fargo & Co.* (avail. Jan. 23, 2018) (concurring with the exclusion of a proposal asking the board to assess and report on the feasibility of requiring senior executives to enter a covenant to reimburse the company for a portion of certain fines or penalties imposed, where the company published a one-page report containing the board's assessment of the feasibility of

the requested covenant, noting that the requested action “may be technically feasible,” but that “implementing the [c]ovenant is neither practicable nor appropriate for [the company]”); *Target Corp. (Johnson and Thompson)* (avail. Mar. 26, 2013) (concurring with the exclusion of a proposal asking the board to study the feasibility of adopting a policy prohibiting the use of treasury funds for direct and indirect political contributions where the company addressed the use of company funds for political purposes in a statement in opposition set forth in a previous proxy statement and in a five-page excerpt of a company report); *General Electric Co. (Recon.)* (avail. Feb. 29, 2012) (concurring with the exclusion of a proposal requesting that the Board “reexamine the company’s dividend policy and consider special dividends as a means of returning excess cash to shareholders,” where the company represented that a board meeting was held in response to the proposal’s submission at which the board formally reexamined the company’s dividend policy, considered special dividends, and ultimately determined that declaring a special dividend was not appropriate at the time).

Here, while the Proposal requests that the Company evaluate and report on certain impacts of the Company’s arbitration practice, the Proposal is not prescriptive as to how the Company should address such matters, nor does it dictate the determination that the Board must reach as a result of the requested review. As described above and as set forth in the Board Report, the Board’s evaluation involved an extensive and thorough undertaking, including by requesting that the General Counsel engage a third party law firm to conduct the Privileged Law Firm Assessment, being advised by the General Counsel regarding that assessment, and in considering relevant Company policies, practices and data related to the underlying concerns of the Proposal. After this careful evaluation, the Board reviewed and approved publication of the Board Report, which includes a summary of the comprehensive review undertaken regarding the Company’s use of mandatory arbitration and consideration of the specific impacts requested by the Proposal, as well as the Board’s determinations as to whether and how to continue its arbitration program. Thus, consistent with the above-cited precedent, the assessment and evaluation set forth in the Board Report substantially implements the Proposal.

Additionally, a report need not be a particular length or form in order to compare favorably to the guidelines of the proposal for purposes of Rule 14a-8(i)(10). For example, as discussed above, in *Dow Chemical 2014*, the Staff concurred with Dow’s argument that the proponent’s request for a report on the impact of the legacy of the Bhopal disaster had already been substantially implemented by the company’s brief Q&A regarding the incident. *See also TECO Energy, Inc.* (avail. Feb. 21, 2013) (concurring with the exclusion of a proposal requesting a report on the environmental and public health effects of mountaintop removal operations, and the feasibility of mitigating measures, where the company had supplemented its sustainability report with a two-page report and four-page table on the topic); and *General Electric Co. (Recon.)* (avail. Feb. 24, 2011) (concurring with the

Office of Chief Counsel
Division of Corporation Finance
December 23, 2021
Page 12

exclusion of a proposal requesting a report on the company's process for identifying and prioritizing legislative and regulatory public policy advocacy activities, and such other information as prescribed by the proposal, where the company prepared and posted a 2.5-page political contributions report on its website). In this manner, the Board Report is no different from the reports provided in *Dow Chemical 2014* and *General Electric*, which spanned only a few pages but nonetheless addressed the essential objective of the proposal.

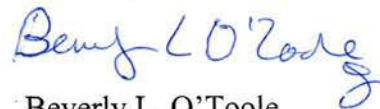
Thus, the Board Report, which addresses impacts of the Company's mandatory arbitration program on its employees and workplace culture and on the "prevalence of harassment and discrimination" and "on employees' ability to seek redress," is directly responsive to the Proposal. As a result, the Company's existing public disclosures compare favorably to each element of the Proposal thereby satisfying the essential objective of the Proposal. Accordingly, for the reasons set forth above, the Proposal may be excluded from the Company's 2022 Proxy Materials under Rule 14a-8(i)(10).

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2022 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to Beverly.OToole@gs.com. Should you have any questions or if you would like any additional information regarding the foregoing, please do not hesitate to contact me (212-357-1584; Beverly.OToole@gs.com) or Jamie Greenberg (212-902-0254; Jamie.Greenberg@gs.com). Thank you for your attention to this matter.

Sincerely,



Beverly L. O'Toole

Enclosures

cc: Laura Campos, The Nathan Cummings Foundation

EXHIBIT A

From: [Laura Campos](#)
To: shareholderproposals@ny.email.gs.com
Cc: [Meredith Benton](#)
Subject: Shareholder Proposal for Inclusion in 2022 Proxy Statement
Date: Friday, November 5, 2021 7:06:05 AM
Attachments: [Arbitration resolution 2022 .pdf](#)
[GS 2022 proof_of_ownership GS 211105\[63\].pdf](#)
[GS CL.pdf](#)

Dear Mr. Rogers,

Attached please find a shareholder proposal for inclusion in Goldman Sachs's 2022 proxy statement.

We were hoping we would not need to file this year, but that seems not to be the case.

Please let me know if you have any questions.

Sincerely,

Laura

Laura Campos (she/her/hers)

Director of Corporate and Political Accountability

The Nathan Cummings Foundation

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████████████████████

November 5, 2021

[Via email to shareholderproposals@gs.com](mailto:shareholderproposals@gs.com)

John F.W. Rogers
Secretary to the Board of Directors
The Goldman Sachs Group, Inc.
200 West Street
New York, New York 10282

Re: Shareholder Proposal for 2022 Annual Shareholder Meeting

Dear Mr. Rogers,

The Nathan Cummings Foundation is an endowed institution with approximately \$480 million of investments. As an institutional investor, the Foundation believes that the way in which a company approaches environmental, social and governance issues has important implications for long-term shareholder value.

It is with these considerations in mind that the Nathan Cummings Foundation is submitting the attached proposal (the "Proposal") pursuant to the Securities and Exchange Commission's Rule 14a-8 to be included in the proxy statement of The Goldman Sachs Group, Inc. The Nathan Cummings Foundation is the lead filer of the Proposal.

The Nathan Cummings Foundation has continuously beneficially owned, for at least one year as of the date hereof, at least \$25,000 worth of The Goldman Sachs Group, Inc.'s common stock. Verification of this ownership, provided by our custodian, Amalgamated Bank, is included herewith. The Nathan Cummings Foundation intends to continue to hold such shares through the date of the Company's 2022 annual meeting of shareholders.

The Nathan Cummings Foundation is available to meet in person or via teleconference on November 17th between 9:30 am and noon Eastern or on November 29th between noon and 2:00 pm Eastern. To schedule a meeting, please contact me at [REDACTED]. We ask that any written correspondence about this proposal be sent by email. If it is necessary to send hard copies of materials, please send them to our offices at [REDACTED].

Sincerely,



Laura Campos

Director, Corporate & Political Accountability

RESOLVED:

Shareholders of Goldman Sachs Group, Inc. (“Goldman Sachs”) ask the Board of Directors to oversee the preparation of a public report on the impact of the use of mandatory arbitration on Goldman Sachs’s employees and workplace culture. The report should evaluate the impact of Goldman Sachs’s current use of arbitration on the prevalence of harassment and discrimination in its workplace and on employees’ ability to seek redress. The report should be published by the end of the third quarter of 2022, be prepared at reasonable cost and omit proprietary and personal information.

WHEREAS:

Title VII of the Civil Rights Act of 1964 states that it is unlawful “to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.”¹ Nevertheless, forty-eight percent of African Americans and thirty-six percent of Hispanics have experienced race-based workplace discrimination.² More than half of senior-level women say that they have been sexually harassed during their careers, with African American women facing an increased relative risk of sexual harassment in the workplace.³

Goldman Sachs recognizes the importance of diversity, stating on its website that “cultivating and sustaining a diverse work environment and workforce...is critical to meeting the unique needs of our diverse client base and the communities in which we operate. We are committed to making progress toward racial equity, advancing gender equality, and increasing representation at every level of our firm.”⁴

Mandatory arbitration may limit employees’ remedies for wrongdoing, reduce employee willingness to report discrimination⁵, and prevent employees from learning about shared concerns.⁶ Arbitration may also enable discrimination, reduce workforce effectiveness, and create brand, legal, and human capital risks.

Goldman Sachs requires its employees to agree to arbitrate employment-related claims. Investors’ concerns about arbitration’s potential to allow harassment and discrimination to go unseen remain particularly pertinent to Goldman Sachs, where thousands of women have alleged gender bias.

Other companies have ceased to require employees to arbitrate discrimination claims. This includes Google, whose use of arbitration was identified as a key aspect of a “culture of concealment” in its \$310 million misconduct settlement.⁷ FINRA, the Financial Industry Regulatory Authority, does not require

¹<https://www.eeoc.gov/laws/statutes/titlevii.cfm>

²<https://www.nbcnews.com/politics/politics-news/poll-64-percent-americans-say-racism-remains-major-problemn877536>

³<https://www.wsj.com/articles/what-metoo-has-to-do-with-the-workplace-gender-gap-1540267680>;
<https://onlinelibrary.wiley.com/doi/abs/10.1111/gwao.12394>

⁴ <https://www.goldmansachs.com/our-commitments/diversity-and-inclusion/#:~:text=Diversity%20and%20Inclusion%20at%20Goldman%20Sachs&text=As%20a%20firm%2C%20we%20believe,where%20we%20live%20and%20work>

⁵ <https://www.hnrlr.org/2020/08/forced-into-employment-arbitration-sexual-harassment-victims-are-saying-metoo-and-beginning-to-fight-back-but-they-need-congressional-help/>

⁶ <https://www.eeoc.gov/eeoc/systemic/review/>

⁷ <https://www.law.com/therecorder/2020/09/25/google-ends-mandatory-arbitration-in-310m-sexual-harassment-settlement/>

arbitration of employment discrimination claims⁸ and in California, arbitration is no longer allowed to be a condition of employment.⁹

At Goldman Sachs' April 29, 2021 annual meeting of investors, fifty-three percent of shares cast for or against a substantially similar proposal supported the request for a report on mandatory arbitration. Yet despite an announcement from the Company that it was appropriate to undertake a review to comprehensively assess employee arbitration, shareholders have not yet seen the requested report.¹⁰

⁸ <https://journals.sagepub.com/doi/full/10.1177/0019793917747520>

⁹ <https://www.dwt.com/blogs/employment-labor-and-benefits/2021/09/california-ban-on-arbitration-agreements>

¹⁰ <https://www.goldmansachs.com/media-relations/press-releases/2021/goldmansachs-statement-on-arbitration-policy-review.html>

EXHIBIT B

Goldman Sachs' Report on Review of Arbitration Program

Providing employees a safe and inclusive workplace which is free of discrimination and harassment is among the firm's highest priorities as part of our "people first" commitment.

On June 4, 2021, Goldman Sachs announced it would undertake a comprehensive review to assess the firm's arbitration program, in response to concerns raised by certain shareholders in connection with the April 2021 annual meeting. Specifically, concerns were raised that the firm's use of binding, pre-dispute arbitration agreements may potentially limit employees' remedies for wrongdoing, allow harassment and discrimination to go unseen and unaddressed, and prevent employees from learning about repeat offenders or other shared concerns. The firm has now completed its review of the arbitration program. Based on this review, the Board of Directors of Goldman Sachs has determined that, for Goldman Sachs, arbitration remains the better way to resolve disputes between employees and the firm. Importantly, as described further below, the firm's review established that the general concerns raised about the use of arbitration agreements are not applicable to Goldman Sachs' arbitration program or experience. Nevertheless, the firm takes seriously the shareholder concerns, which are genuine and strongly held. Accordingly, the Board has directed management to institute enhancements to the firm's arbitration program for the purpose of further increasing transparency and accountability including: (1) regular reporting to the Board on sexual harassment matters; (2) regular periodic assessments of the firm's arbitration program; and (3) waiving confidentiality of arbitration decisions on sexual harassment claims at the option of the employee.

In order to assess the impact of the use of mandatory arbitration on Goldman Sachs' employees and workplace culture, in July 2021 the firm retained Steptoe & Johnson LLP ("Steptoe"), to undertake a comprehensive assessment of the firm's arbitration program.

Specifically, Steptoe was asked to advise on whether Goldman Sachs' arbitration program negatively impacts employees' ability to seek redress of discrimination or harassment and whether the confidential nature of arbitration proceedings increases the prevalence of workplace misconduct. Steptoe retained Professor Samuel Estreicher, Director of the Center for Labor and Employment Law and Co-Director of the Institute of Judicial Administration at New York University School of Law, to assist in advising the firm. Steptoe and Professor Estreicher conducted a comprehensive review of Goldman Sachs' arbitration program covering a period of approximately six years. Their assessment was completed in October and provided to the Board of Directors.

In reaching the conclusion that arbitration remains the better way to resolve disputes between employees and the firm, the Board considered Steptoe's and Professor Estreicher's assessment, including the history and experience of arbitration at the firm in the context of the firm's policies, processes and protocols. More particularly, many of the concerns raised about pre-dispute arbitration agreements by certain shareholders in connection with the Goldman Sachs 2021 annual meeting, as well as in public statements and the academic literature, do not apply to Goldman Sachs' program itself or experience with arbitration. There is no indication the current program is negatively impacting employees' ability to seek redress of alleged discrimination or harassment, or that it is increasing the prevalence of discrimination or harassment in the workplace. There also is no sign Goldman Sachs' arbitration program is in any way being used to cover up incidents of discrimination or harassment, protect perpetrators or encourage recidivism.

Goldman Sachs has comprehensive employment policies, procedures and protocols in place for addressing complaints of discrimination and harassment, which the firm follows, regularly reviews and updates. The firm's Code of Conduct, which was recently studied and

updated in March 2021, details the “zero tolerance policy for discrimination and harassment,” which applies on and off premises, at work-related events and outside of work. Employees are encouraged and trained to confront inappropriate behavior and are required to escalate any potential discrimination and harassment concerns they observe in or outside the office.

Goldman Sachs has established a multitude of channels, internal and external, for reporting and escalating complaints, including a hotline and a web portal which allow for anonymous reports by employees and the public. All employee complaints, including complaints of discrimination or harassment, are recorded and investigated, regardless of the channel through which the complaint is raised. At the outset of an investigation, there is a cross-check to determine whether the subject of a complaint has been the subject of prior complaints or disciplinary action. Where wrongful conduct is found, action is taken in accordance with the firm’s disciplinary framework.

After the onset of the “Me Too” movement, the firm undertook a review of its policies and procedures relating to sexual harassment claims. Among other steps, the firm put in place additional outside escalation channels where employees or members of the public can voice their concerns. The firm also instituted a policy that any claim of sexual harassment must be escalated to the firm’s CHRO and General Counsel for review. In addition, if a complaint involves a serious conduct concern (including sexual harassment allegations and regardless of the employee’s role or title), the firm’s policy requires that the Global Disciplinary Council (comprised of the firm’s most senior leaders) and senior managers within the relevant Division are directly informed and conferred with. Similarly, the Global Disciplinary Council and relevant senior managers are informed of every material complaint involving a Managing Director or Partner, regardless of the subject matter. There also is regular reporting to the Board and senior leadership on conduct issues.

Goldman Sachs' arbitration program exists within this robust framework. There is no indication that arbitration limited employees' access to legal representation or inhibited employees' ability to receive a fair and unbiased proceeding and outcome.

Although confidentiality is a hallmark of arbitration proceedings, outcomes of arbitrations are not always confidential. For example, FINRA arbitration awards are public. However, confidentiality can be a benefit of arbitration for both employer and employees. Claims of discrimination or harassment often involve highly sensitive subject matter where confidentiality allows complainants to feel safe coming forward, and where protecting the privacy of the parties and witnesses involved is of paramount importance to all. Additional benefits of arbitration include certainty, consistency, access, and efficiency. It is generally recognized that cases in arbitration reach resolution faster than those in litigation where overburdened court dockets prevent swift justice. There also is no indication that the firm's arbitration program shields employees who engaged in misconduct – sexual harassment or otherwise. The firm's robust policies and procedures for ferreting out, investigating, addressing and reporting misconduct are strong preventative measures for curtailing recidivism.

Given how arbitration fits within the firm's overall framework, the firm's arbitration experience, and the benefits of arbitration to the firm, its employees, and its shareholders, and after considering the concerns raised by certain shareholders, the Board of Directors of Goldman Sachs has determined that it is appropriate to continue the firm's current arbitration program, while instructing firm management to implement certain enhancements to address the concerns raised. Namely, the General Counsel will report to the Board on any material complaints of sexual harassment. The firm also will undertake a periodic assessment of the arbitration program, which will include analyses of arbitration experiences and litigations brought by employees since the

prior review, as well as a report to the Board on the assessment, and recommendations of program enhancements, or a recommendation to change the program if warranted. Finally, while the firm believes that the confidentiality of arbitration proceedings benefits all parties, employees who assert a claim of sexual harassment in an arbitration will have the option to waive confidentiality as to the arbitration decision on the claim in the event it will not already be made public under the applicable forum rules.

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Beverly L. O'Toole
Managing Director
Associate General Counsel

Goldman
Sachs

January 3, 2022

VIA E-MAIL

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *The Goldman Sachs Group, Inc.*
Shareholder Proposal of The Nathan Cummings Foundation
Securities Exchange Act of 1934—Rule 14a-8

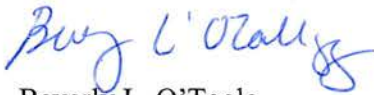
Ladies and Gentlemen:

In a letter dated December 23, 2021, we requested that the staff of the Division of Corporation Finance (the "Staff") concur that The Goldman Sachs Group, Inc. (the "Company"), could exclude from its proxy statement and form of proxy for its 2022 Annual Meeting of Shareholders a shareholder proposal (the "Proposal") and statements in support thereof submitted by The Nathan Cummings Foundation (the "Proponent").

Enclosed as Exhibit A is a letter from the Proponent verifying that the Proponent has withdrawn the Proposal. In reliance on this communication, we hereby withdraw the December 23, 2021 no-action request.

Please do not hesitate to call me at (212) 357-1584 or Jamie Greenberg at (212) 902-0254 if you have any questions.

Sincerely,


Beverly L. O'Toole

Enclosures

cc: Laura Campos, The Nathan Cummings Foundation

From: [Laura Campos](#)
To: [Shareholder Proposals_GS](#)
Cc: [O'Toole, Beverly L \[Legal\]](#)
Subject: Re: Correspondence from The Goldman Sachs Group, Inc.
Date: Monday, January 03, 2022 4:31:25 PM

Hello,

In light of the evaluation and recently released report, the Nathan Cummings Foundation is withdrawing the shareholder proposal submitted for inclusion in The Goldman Sachs Group's 2022 proxy statement.

Please let me know if you have any questions.

Best,

Laura

Laura Campos (she/her/hers)

Director of Corporate and Political Accountability

The Nathan Cummings Foundation

██████████ ██████████ ██████████

New York, NY 10005

██

From: Greenberg, Jamie on behalf of shareholderproposals@ny.email.gs.com

Date: Thursday, December 23, 2021 at 12:16 PM

To: Laura Campos

Cc: O'Toole, Beverly L

Subject: Correspondence from The Goldman Sachs Group, Inc.

Please see the attached on behalf of The Goldman Sachs Group, Inc.

Thank you.